

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
EVAN MORRIS dba PALMER COKING
COAL Co,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 79-173

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of three \$250 civil penalties for the alleged violations of Section 9.03(b) of respondent's Regulation I, five \$250 civil penalties for the alleged violations of Section 8.02 of respondent's Regulation I, and one \$250 civil penalty for the alleged violation of Section 9.15(c) of respondent's Regulation I, totaling \$2250 in civil penalties, came before the Pollution Control Hearings Board, Chris Smith, member, at a formal hearing in Seattle on December 18, 1979. Nancy E. Curington presided.

1 Appellant represented himself. Respondent was represented by its
2 attorney, Keith D. McGoffin.

3 Having read the transcript of the testimony, having examined the
4 exhibits and having considered the contentions of the parties, the
5 Pollution Control Hearings Board makes these

6 FINDINGS OF FACT

7 I

8 Pursuant to RCW 43.21B.260, respondent has filed a certified copy
9 of its Regulation I, and amendments thereto, with this Board and they
10 are noticed.

11 II

12 Palmer Coking Coal has operated a landfill site in the Newcastle
13 area in King County for the past 10-12 years. Early in the morning of
14 August 9, 1979, a fire was discovered at the landfill site; the fire,
15 the source of which remains unknown, continued to burn until some time
16 after August 22, 1979.

17 III

18 On August 9, 1979, at approximately 8:30 a.m., respondent's
19 inspector Harris observed a large plume of smoke in the Kenndale area
20 while he was driving northbound on Interstate 5 near Southcenter
21 Shopping Center. He proceeded to the source of the fire at the
22 landfill site and upon arrival, at approximately 10:00 a.m., he
23 observed a fire about 400 feet long, 10-20 feet deep along the ridge.
24 He observed automobile tires, creosote-soaked poles and construction
25 debris in the fire. The inspector asked the owner if he knew how and
26 when the fire had started. The owner responded that he had first

1 learned of it at 6:00 that morning and that the fire department had
2 declined to extinguish the fire, stating that it preferred to allow
3 the owner to extinguish the fire by dumping quantities of dirt on the
4 fire. Harris observed two tractors moving dirt around the edges of
5 the fire; they appeared to be attempting to contain the fire. After
6 positioning himself, he observed the brown-colored plume and recorded
7 100% opacity for twenty consecutive minutes. The inspector then
8 issued Notice of Violation No. 16442 to an employee of the appellant.
9 On September 21, 1979, respondent sent by certified mail Notice and
10 Order of Civil Penalty of \$250 for the alleged violation of Section
11 9.03(b)(2) of respondent's Regulation I and Notice and Order of Civil
12 Penalty of \$250 for the alleged violation of Section 8.02(3) of
13 respondent's Regulation I.

14 IV

15 On August 13, 1979, at approximately 1:30 p.m., respondent's
16 inspector Vaughn was at a meeting with officials from Washington State
17 Department of Ecology, the U. S. Environmental Protection Agency,
18 Puget Sound Air Pollution Control Agency, and appellant Morris at the
19 landfill site. At that time the inspector observed airborne dust
20 rising from heavy equipment (trucks, scrapers, etc.) hauling dirt.
21 The appellant's water truck was temporarily nonfunctional due to a
22 flat tire. He also observed several hundred feet of open fire
23 containing plastics, paint cans, scrap lumber, plaster, etc. He did
24 not observe any attempt being made to dump either dirt or water on the
25 fire itself. At 2:40 p.m., after positioning himself, Vaughn observed
26 the whitish-blue plume and recorded opacity of 100% for twenty

1 consecutive minutes. After talking with Morris, who speculated that
2 the cause of the fire was heat from oxidation in the ground or a
3 blackened stump, the inspector issued three Notices of Violation, No.
4 16503, No. 16501, and No. 16502. On September 21, 1979, respondent
5 sent by certified mail Notice and Order of Civil Penalty of \$250 for
6 the alleged violation of Section 9.15(c), Notice and Order of Civil
7 Penalty of \$250 for the alleged violation of Section 9.03(b) and
8 Notice and Order of Civil Penalty of \$250 for the alleged violation of
9 Section 8.02(3) of respondent's Regulation I.

10 V

11 On August 16, 1979, at approximately 2:30 p.m., respondent's
12 inspector Vaughn returned to the landfill site to check the fire. The
13 fire, at that time about 1000 square feet, was still burning and
14 contained construction debris, plastic bags, natural vegetation, etc.
15 After positioning himself, he recorded 90% opacity for twenty
16 consecutive minutes. The inspector then issued Notice of Violation
17 No. 16507 and Notice of Violation No. 16508 to the caretaker at the
18 landfill site. On September 21, 1979, respondent sent by certified
19 mail Notice and Order of Civil Penalty of \$250 for the alleged
20 violation of Section 9.03(b) and Notice and Order of Civil Penalty of
21 \$250 for the alleged violation of Sections 8.02(3) and 8.02(4) of
22 respondent's Regulation I. There was no showing that appellant
23 intended to burn the materials for the purpose of demolition of those
24 materials.

25 VI

26 On August 20, 1979, at approximately 11:30 a.m., respondent's
27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 inspector Vaughn met with the Health and Fire Departments at the
2 landfill site. At that time the fire was approximately 1/4 mile
3 across, twenty to thirty feet deep. The fire consisted of natural
4 vegetation, paper, tires, wallboard, wiring, plastics, etc. Vaughn
5 did not observe any water, chemical or dirt being dumped onto the
6 fire, although dirt was being dumped close to the fire's edge in an
7 apparent attempt to contain the fire. The inspector sent Notice of
8 Violation No. 16510 to the appellant by certified mail; on September
9 21, 1979, respondent sent by certified mail Notice and Order of Civil
10 Penalty of \$250 for the alleged violation of Sections 8.02(3), and
11 8.02(4) of respondent's Regulation I. There was no showing that
12 appellant intended to burn materials for the purpose of demolition of
13 those materials.

14 VII

15 On August 22, 1979, at approximately 2:50 p.m., respondent's
16 inspector Harris, while on a routine surveillance of the area,
17 observed numerous small plumes of smoke. He advised appellant Morris
18 of his intent to issue a Notice of Violation for failure to completely
19 extinguish the fire, although it appeared to be mostly contained. He
20 issued Notice of Violation No. 16447 to an employee at the site; on
21 September 21, 1979 respondent sent by certified mail Notice and Order
22 of Civil Penalty of \$250 for the alleged violation of Section 8.02(3)
23 of respondent's Regulation I.

24 VIII

25 All of the above Notices and Orders of Civil Penalties are
26 subjects of the appeal herein.

IX

In August of 1979, the weather was unusually hot and dry; consequently, the fire danger was great.

X

The appellant's landfill site is one and one-half miles to the nearest source of water. Appellant required its two CAT operators to work overtime during the fire and attempted to extinguish and contain the fire by depositing dirt onto the fire's edge. Due to the heat of the fire, the employees and equipment could not get very close to the fire itself. Appellant has previously had experience with fires; they are to be expected due to the nature of landfills.

XI

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

CONCLUSIONS OF LAW

I

Section 9.03(b) of respondent's Regulation I makes it unlawful for any person to cause or allow the emission of any air contaminant for a period totaling more than three minutes in any one hour which is of an opacity equal to or greater than 20%.

Section 8.02(3) of respondent's Regulation I makes it unlawful for any person to cause or allow any outdoor fire containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics or any substance other than natural vegetation which normally emits dense smoke or obnoxious odors.

1 Section 8.02(4) of respondent's Regulation I makes it unlawful for
2 any person to cause or allow any outdoor fire for the purpose of
3 demolition, salvage or reclamation of materials.

4 Section 9.15(c) of respondent's Regulation I makes it unlawful for
5 any person to cause or permit untreated open areas located within a
6 private lot or roadway to be maintained without taking reasonable
7 precautions to prevent particulate matter from becoming airborne.

8 Section 3.29 of respondent's Regulation I provides for a civil
9 penalty of up to \$250 per day for each violation of Regulation I.

10 II

11 Appellant violated Section 9.03(b) of respondent's Regulation I as
12 alleged, on August 9, 1979, August 13, 1979, and August 16, 1979, by
13 allowing an emission of smoke in excess of the limits established by
14 the regulations.

15 III

16 Appellant violated Section 8.02(3) of respondent's Regulation I as
17 alleged, ⁰On August 9, 1979, August 13, 1979, August 16, 1979,
18 August 20, 1979, and August 22, 1979, by allowing an outdoor fire
19 containing prohibited materials to continue to burn.

20 IV

21 Appellant did not violate Section 9.15(c) (4) of respondent's
22 Regulation I as alleged on August 13, 1979, by causing or permitting
23 untreated open areas located within a private lot or roadway to be
24 maintained without taking reasonable precautions to prevent
25 particulate matter from becoming airborne. Appellant's evidence
26 showed that he did take reasonable precautions to control the dust.

V

Respondent did not show that appellant violated Section 8.02(4) as alleged on August 16, 1979, and August 20, 1979, by allowing an outdoor fire for the purpose of demolition of materials.

VI

Although appellant has violated the above two sections of respondent's Regulation I, there are factors which justify mitigation of the penalty. First of all, although he allowed it to continue burning for weeks after it began, the cause of the fire's ignition was apparently not the fault of the appellant. Secondly, the weather had been unusually hot, increasing the fire danger. Finally, the appellant did make an attempt to contain the fire by using existing personnel. However, given the extreme duration and size of the fire, it does appear that appellant reasonably should have expanded his efforts to extinguish the fire by securing additional personnel and equipment. Consequently, the \$250 civil penalty for the alleged violation of Section 9.15(c) should be set aside; civil penalties No. 4404 and 4405, for \$250 each, should be halved because Section 8.02(4) was not violated. The remaining civil penalties should be affirmed, but \$500 should be suspended on the provision that appellant not violate respondent's regulations for a period of two years.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters the following

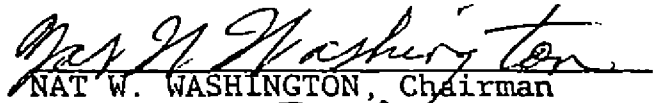
ORDER

The one \$250 civil penalty for the alleged violation of Section

1 9.15 (c) is set aside. Two Civil Penalties of \$250, each for
2 violation of 8.02 (3) and the alleged violation of 8.02(4), are
3 each reduced to \$125. Three Civil Penalties of \$250 each for
4 violation of 9.03 (b), and three civil penalties of \$250 each for
5 violation of 8.02(3), are affirmed. A total of \$1750 in penalties
6 is sustained, with \$500 of that amount suspended on the condition
7 that appellant not violate respondent's regulations for a period
8 of two years after this Order becomes final.

9 DONE this 10th day of March, 1980.

10 POLLUTION CONTROL HEARINGS BOARD

11 
12 NAT W. WASHINGTON, Chairman

13 
14 CHRIS SMITH, Member

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16 DAVID AKANA, Member

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27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

CERTIFICATION OF MAILING

I, Trish Ryan, certify that I mailed, postage prepaid, copies of the foregoing document on the 10th day of February, 1980, to each of the following-named parties at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Evan D. Morris
Palmer Coking Coal Company
P. O. Box A
Black Diamond, WA 98010

Mr. Keith D. McGoffin
Rovai, McGoffin & Turner
818 South Yakima Avenue
Tacoma, WA 98405

Mr. Ronald Busby
Puget Sound Air Pollution
Control Agency
P. O. Box 9863
Seattle, WA 98109


TRISH RYAN
Docket Clerk